

The Odisha Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 353 CUTTACK, TUESDAY, FEBRUARY 28, 2012 / FALGUNA 9, 1933

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 18th February 2012

No. 1210—IR-ID-103/2010-LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 10th January 2012 in I. D. Case No. 15 of 2010 of the Presiding Officer, Labour Court, Sambalpur to whom the industrial dispute between the Management of Principal, Veer Surendra Sai Medical College, Burla, Sambalpur and their workman Shri Narayan Bag, Ex-Gate Keeper (DLR) was referred to for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER

LABOUR COURT, SAMBALPUR

INDUSTRIAL DISPUTE CASE No. 15 OF 2010

The 10th January 2012

Present :

Shri Pradipa Kumar Sasmal,
Presiding Officer,
Labour Court,
Sambalpur.

Between :

The Principal,
Veer Surendra Sai Medical College,
Burla, Sambalpur.

.. First Party—Management

And

Their workman,
Shri Narayan Bag,
Ex-Gate Keeper (DLR),
S/o Late Judhister Bag,
At Balerpada,
P.O./P.S. Burla,
District Sambalpur.

.. Second Party—Workman

Appearances :

Shri A. K. Panigrahi Authorised Representative.	.. For the First Party—Management
Self	.. For the Second Party—Workman

AWARD

The present dispute arose out of the reference made by the Government of Orissa (now Odisha) Labour & Employment Department, vide their Order, Dt. 8-10-2010 under Letter No. 8577—ID-103/2010-LE., giving rise to the registration of the present case under Sections 10 and 12 of the Industrial Disputes Act, 1947 (for short the “Act”). The dispute involved is scheduled as follows :

“Whether the termination of service of Shri Narayan Bag, Ex-Gate Keeper (DLR), workman by the Principal, Veer Surendra Sai Medical College, Burla, Sambalpur with effect from 1st June 2007 is legal and/or justified ? If not, to what relief the workman is entitled ?”

2. In his statement of claim the workman submitted that from Dt. 1-5-1999 till Dt. 31-5-2007 on the oral orders of the Principal of V. S. S. Medical College he worked as a Gate Keeper at the Girl's Hostel No. 2 on daily wages of the said College as though the calendar dates of the individual months including the Sundays and the other National Holidays for an amount of Rs. 320 P.M. and as such, Gate Keeper, he discharged his duties to the satisfaction of all concerned without there being any allegations against him for which he was also issued with the Service Experience Certificate by the Chairman and the Secretary of the said hostel. He submitted further that at the time of his engagement the Principal and the Council Chairman of the hostel as well had assured him to discharge the duties satisfactorily so that he should be absorbed in the regular post permanently in the event of receipt of any orders from the Government. For such assurance he said to have worked although the years with a low salary. In the process, when on Dt. 14-7-2005 the Principal of the College asked to collect the bio-data of the daily wages labourers he had submitted the same to the Chairman of the hostel Council. But, according to the workman, in the passage of time, the Principal instead of regularising his service, advertised for the post of Sweeper, Attendant on contractual basis on Dt. 17-9-2005 for which he on Dt. 23-9-2005 submitted a representation protesting invitation of fresh applications for the post in which he has been engaged without considering his case but to no effect. On the other hand, it is alleged by the workman, that the Principal in gross violation of Rules and norms appointed different other junior persons afresh even though those candidates had no required qualification for the job. He submitted further that without considering his case and absorbing him in any regular post, the Principal all on a sudden on Dt. 1-6-2007 terminated him illegally for which he immediately called on the said authority to know the cause but nothing could be alleged to have been stated to him. Thereafter the workman said to

have represented before the Principal, Director of Medical Education and Training (D.M.E.T.) and the higher authorities but none of them paid any heed to his grievances and he was even not considered to be absorbed in the regular post though there was lot of communications in between the Principal and different higher health authorities in the matter.

Finding no other go, the workman ultimately said to have filed an application under Section 33-C(2) of the I. D. Act, 1947 (for short, the "Act") against the Principal on Dt. 26-6-2007 before this Court for the less payment made to him which was registered as Misc. Case No. 29 of 2007 and the said proceeding ultimately terminated in his favour. But he alleged that the opposite party has not paid the dues to him till date. He, therefore, prayed the Court to take into account his experience of service as Gate Keeper and to reinstate him with full back wages in view of the allegations advanced by him against the Principal of the first party management.

3. The management in its written statement challenged the maintainability of the proceeding on the ground of non-joinder of necessary other authorities of the Health Department as shown in Para. 2 besides disclosing the nature of its institution which according to them, does not cover under the provisions of the Act. It was submitted further by the management that the second party workman was never engaged against any sanctioned post nor he was selected after following due procedure for the recruitment and, as such, he would have no right of claim of reinstatement of his job in as much as he was engaged purely on stop gap arrangement. According to the management the workman was engaged by the Hostel Council as a contract part time labourer to work for two days only in a week totalling to 8 (eight) days in a month at the rate of Rs. 50 from 7-2005 to 5-2007 and that he had already been paid with all the wages for the working period. According to the management, since the workman was not eligible for appointment to any Group-D post, his case had already been rejected by D.M.E.T., Odisha and ultimately when his service as contract labourer was not required his engagement was terminated vide Office Order No. 2912 (3), Dt. 28-3-2007. Denying the claim of the workman for his engagement from Dt. 1-5-1999 to 2007, the management submitted further, that they have preferred W.P. No. 14240 of 2009 against the decision of this Court vide Misc. Case No. 29 of 2007 which was also intimated to the Labour Commissioner, Odisha, Asst. Commissioner, Sambalpur, and with such assertions prayed the Court to reject the claim of the workman among other things with the assertions that the claim of the petitioner has been under the adjudication of the Hon'ble High Court.

In the rejoinder to the written statement, the workman submitted that the assertions made by the management in their written statement are false, irrelevant and without any proof which are not connected in any way regarding his engagement. Reiterating the stand taken by him in the statement of claim about the different communications made in between the Principal and the other higher health authorities to consider his case and absorb in the regular post he submitted further that the Principal had not obeyed the instructions given to him and has come up with frivolous facts to disentitle his claim. He submitted further that the Hon'ble High Court in the meantime has rejected

the Writ Petition No. 14248/2009 on 30-6-2011 and since from the date of his engagement till termination he had worked for more then 240 days would be liable for reinstatement with back wages in view of the provisions of the Act in as much as he was not given with any retrenchment compensation.

ISSUES

4. On the aforesaid pleadings of the parties, the following issues have been settled for adjudication :—

- (i) “Whether the termination of service of Shri Narayan Bag, Ex-Gate Keeper (DLR) workman by the Principal, Veer Surendra Sai Medical College, Burla, Sambalpur with effect from 1st June 2007 is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?

5. The workman himself and the Associate Professor of the management Institution, who is also found to be the authorised representative of the first party management were only examined as the lone witness on their respective behalf photo copies of number of letters, circular, orders and the orders passed by different authorities including the Hon’ble High Court were brought into record by the parties as the documentary evidence.

FINDINGS

6. *Issue No. (i)*—In his examination-in-chief through the affidavit the workman reproduced the stand taken by him in the statement of claim and the rejoinder as well and while in the box proved number of documents as Exts. W 1 to Ext. W 14. But during cross-examination he admitted to have not received with any written order for his engagement and during further cross-examination admitted that as per Ext. W 1 he was working as a Gate Keeper in the hostel on daily wages basis. He deposed ultimately that on Dt. 1-6-2007 he was removed from service without issuing any removal letter to him. It is found from the answers given by the witness during further cross-examination that on Dt. 20-7-2009 he had submitted his grievances in writing before the conciliation Officer-*cum*-Assistant Labour Commissioner, Sambalpur and proved the photo copy of the certified copy of the Order, Dt. 30-6-2011 passed in W.P. (C) No. 14248/2009 filed by the management before the Hon’ble High Court to show dismissal of their claim. Among other things he denied the suggestion to have not been appointed according to the Government procedure.

7. On the other hand, the authorised representative of the first party management in his examination-in-chief through the affidavit, marked Ext. M 1, reproduced the stand taken by it in the written statement and asserted further that before termination of his engagement with effect from 1st June 2007 the second party workman had not at all worked without any interruption for a period of 240 days during the period of 12 (twelve) calendar months preceding the date of his termination and since he was not engaged following the due procedure of law the provisions of Section 25F of the Act was not required to be complied with by them. Like the workman, the authorised representative

as M.W. 1 also proved the copies of number of documents which were marked as Ext. M 2 to M 13. When cross-examined M.W. 1 deposed that the management was giving an amount of Rs. 320 for 8 (eight) days of work in a month but he was not able to say if the workman was paid with the minimum wages as per the Government rule. He, however, in the next breath stated that the payment was made by the Principal according to the then existing rate for the concerned worker. It is seen from the further statement of the witness that the management had not issued any notice earlier to the retrenchment of the workman and he was also not paid with any retrenchment compensation which, according to M.W. 1, were not necessary. He admitted further that no approval from the D.M.E.T., Odisha or the Government was obtained by the management before engagement of the workman as he was engaged as a daily labourer. But again he stated that there was orders from the above authorities regarding disengagement of the daily wage workers like the workman. Though this witness admitted about filing of I. D. Misc. Case No. 29/2007 by the workman against the management before this Court and its termination in his favour, he expressed ignorance about filing of any appeal by the management against that order before the Hon'ble High Court and rejection of the same. During further cross-examination he also denied to have known if the workman had already been paid with all the amounts claimed by him. On being questioned further M.W. 1 admitted about submission of applications by the workman for the post of Attendant advertised on behalf of the management but denied the suggestion that his candidature was rejected improperly though he had necessary qualification and experience for the post by denying further that the Principal with a view to harass the workman has intentionally not absorbed in any regular post nor has paid the dues to him according to the orders of the Court. He denied his own knowledge regarding publication of the advertisement for filling up of the post of Gate Keeper.

Some other evidence regarding the alleged irregularities committed by the Principal for the interview conducted by the management and the appointments made were adduced by the workman through documentary evidence and M.W. 1 was cross-examined on that score at length but, it appeared to my humble view, that the same can not be considered being redundant before this forum.

This much is the evidence adduced by the parties

8. In the written note of argument submitted by the workman on Dt. 27-12-2011, it was found that he has again reproduced the stand taken by him in the statement of claim and rejoinder besides reiterating the allegations against the management about the irregularities committed in the interview for different posts and the subsequent appointment given to different persons. He has also alleged about non-compliance of the statutory provisions of the Act by the management. It is, however, seen from the documents submitted by the workman that along with the written note of argument he has appended the photo copy of the registered letter No. 6651, Dt. 22-11-2011 issued by the Accounts Officer of the Management College to him regarding transmission of an Account Payee Cheque of the even date for Rs. 18,380.

On the other hand, the authorised representative of the management in the written note of argument submitted almost the sum total of the evidenciary value of the documents proved by him while in the box besides mentioning certain legal position. But, when the workman did not submit

any case law to substantiate his claim, the management pressed into service the case laws reported in 2009 (Supp. 1) O.L.R. 561 (Jitendra Vs. Registrar), (2009) 2 S.C.C. (L & S) 646 (Krishna Vs. Mohd.), (2010) 1 S.C.C. (L & S) 1126 (Union Vs. M. K.) and (2010) 1 S.C.C. (L & S) 545 (2009) 15 S.C.C. 327 (Jasbir Vs. Haryana).

Out of those case laws, in 2009 (Supp. 1) O.L.R. 561 (*Supra*) when it was held that any appointment made on temporary or *ad hoc* basis in violation of the mandate of the Constitution is not permissible and thus void in (2010) 1 S.C.C. (L & S) 545 (*Supra*), it was observed that in the event of alleged violation of Section 25-F of the I. D. Act, 1947, the nature of appointment, the period of appointment, the availability of the job, etc. should be weighed with the Court for determination of such an issue. In (2009) 2 S.C.C. (L & S) 646 (*Supra*) their Lordship referring the other judicial pronouncements held that the workman has to prove completion of 240 days of work under Section 25-F of the I. D. Act. 1947. However, in (2010) 1 S.C.C. (L & S) 545 (*Supra*) Their Lordships held further that on order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not be automatically passed. The award of reinstatement with full back wages in a case where the workman particularly a daily wager (underline mine) who has completed 240 days of work in a year preceding the date of termination has not be found to be proper. Compensation instead of reinstatement has been held to meet the ends of justice. Saying so, their Lordships at Paras. 17 and 18 of the judgment discussed the manner in which the compensation should be awarded and determined.

9. Keeping in mind the above principles, when the dispute involved in this case is examined, it is found that the workman had rendered the job admittedly as a daily wager. As such, he, in view the observation made by their Lordships in (2010) 1 S.C.C. (L & S) 545 (*Supra*), notwithstanding the length of service rendered by him under the management, would not be entitled to the relief of reinstatement with full back wages as prayed for by him. As regards the legality or otherwise of the termination of the workman by the management and to pay him the compensation in lieu thereof in the light of the observations made by their Lordships in the aforesaid Supreme Court Case law it is found that of late the workman had been issued with a cheque for Rs. 18,380 vide letter, Dt. 22-11-2011. From the documents submitted by the management it appeared that they have produced the Certified copy of the Orders passed by this Court on Dt. 19-3-2009 in Misc. Case No. 29/2007 initiated by the workman as the petitioner against the Management—Opposite Party. From the Orders passed in the Misc. Case it is found that the workman therein had claimed realisation of his unpaid wages from his employer with the assertions that the management terminated him from his job without giving his legal dues for the services rendered by him during the relevant period. As stated earlier, the workman has proved the photo copy of the orders passed by the Hon'ble High Court in W.P. (C) No. 14248/2009 as Ext. W. 16 from which it is found that the writ preferred by the management against the Order, Dt. 19-3-2009 passed by this Court in Misc. Case No. 29/2007 was dismissed and the management was directed to comply the orders passed by this Court in the above Misc. Case. Perhaps for that reason the management was found to have issued the cheque of Rs. 18,380 to the workman on Dt. 22-11-2011. Be that as it may, it remained a fact that the workman while agitating his grievance in the said Misc. Case confined his claim only

for the non-payment of the legal dues to him by the management for the service rendered by him and by then he did not agitate the legality, if any, committed by the management in terminating him from his service.

The principles of *res judicata* was held applicable to a dispute under the Act by different judicial pronouncements. In that view of the matter, I am of the considered view, that the workman would not be otherwise permitted to agitate the grievances regarding the legality or otherwise of the termination of his service in a subsequent proceeding like the present one being barred under the principles of constructive *res judicata*. Consequently, when he remained satisfied by agitating his claim in the Misc. Case under Section 33 (C) of the Act and ultimately found to have received the amount due to him, he even otherwise would not be entitled to any compensation further in lieu of his termination from service in the light of the principles decided in (2010) 1 S.C.C. (L & S) 545 (*Supra*).

Thus concluding the discussion in the above manner issue No. i is answered against the workman.

10. *Issue No. (ii)*—For the discussion made in issue No. i, the workman would not be entitled to any other relief also. Hence, answering this issue accordingly, it is ordered.

AWARD

That the reference be and the same is adjudicated against the workman on contest but without any cost.

Dictated and corrected by me.

PRADIPA KUMAR SASMAL
10-1-2012
Presiding Officer
Labour Court
Sambalpur

PRADIPA KUMAR SASMAL
10-1-2012
Presiding Officer
Labour Court
Sambalpur

By order of the Governor
T. K. PANDA
Under-Secretary to Government
